

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7634

Investigation into Compliance of Comcast of)
Connecticut/Georgia/Massachusetts/New)
Hampshire/New York/North Carolina/Virginia/)
Vermont, LLC with Requirements of Underground)
Utility Damage Prevention Program)
)

Order entered: 7/13/2010

**ORDER OPENING INVESTIGATION
AND NOTICE OF PREHEARING CONFERENCE**

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") commences an investigation, pursuant to 30 V.S.A. §§ 30, 209(a), 502, 509, 7006, and Board Rule 3.800, into the compliance of Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, ("Comcast") with the requirements of Vermont's Underground Utility Damage Prevention Program. In this investigation, the Board will also determine whether penalties should be imposed for any non-compliance with those requirements and whether, as a result of any such non-compliance, good cause exists to modify the Certificates of Public Good ("CPGs") that the Board issued Comcast in Docket Nos. 7077 and 7379.

II. BACKGROUND

In Docket No. 7077, the Board issued a CPG authorizing Comcast to own and operate cable television systems in 139 towns, cities, and gores in the State of Vermont.¹ In Docket No. 7379, the Board issued a CPG authorizing Comcast to own and operate cable television systems in eight additional towns.² Both the Docket No. 7077 CPG and the Docket No. 7379 CPG

1. Docket No. 7077, Second Amended CPG issued 4/19/10.

2. Docket No. 7379, CPG issued 3/21/08.

include the following as Condition 12 of the CPG: "Comcast shall at all times comply with Vermont law and all applicable regulations, as they may be amended from time to time."³

Chapter 86 of Title 30, Vermont Statutes Annotated, establishes an underground utility damage prevention system (the "Dig Safe system") in Vermont. As required by 30 V.S.A. § 7003, the Board has adopted a rule (Board Rule 3.800) to implement the Dig Safe system.

The statute and the Board Rule require, inter alia, that:

- no person or company may engage in excavation activities, except in emergencies, without giving specified advance notice to the Dig Safe system;⁴
- upon receiving such notice of excavation activities, the Dig Safe system shall notify the Vermont companies whose facilities may be affected;⁵ and
- upon receiving such notice from the Dig Safe system, a Vermont company so notified shall mark, within specified time periods, the approximate location of its underground utility facilities in the area of the proposed excavation.⁶

Over the past year, the Board issued the following twenty-four fines to Comcast for violations of the requirement that it mark the approximate location of its underground facilities after receiving notice of excavation activities from the Dig Safe system:⁷

1. Dig Safe Notice No. 580, Order issued 10/6/09.
2. Dig Safe Notice No. 588, Order issued 11/19/09.
3. Dig Safe Notice No. 591, Order issued 10/7/09.
4. Dig Safe Notice No. 593, Order issued 10/7/09.
5. Dig Safe Notice No. 595, Order issued 10/7/09.
6. Dig Safe Notice No. 605, Order issued 10/14/09.
7. Dig Safe Notice No. 610, Order issued 10/14/09.
8. Dig Safe Notice No. 613, Order issued 10/14/09.
9. Dig Safe Notice No. 614, Order issued 10/14/09.
10. Dig Safe Notice No. 621, Order issued 10/14/09.

3. Docket No. 7077, Second Amended CPG issued 4/19/10, at 5 (Condition 12); Docket No. 7379, CPG issued 3/21/08, at 4 (Condition 12).

4. 30 V.S.A. § 7004; Board Rule 3.803(A).

5. 30 V.S.A. § 7005.

6. 30 V.S.A. § 7006; Board Rule 3.803(C).

7. The dates of the twenty-four underlying violations run from July 2, 2008, to November 4, 2009.

11. Dig Safe Notice No. 627, Order issued 10/14/09.
12. Dig Safe Notice No. 628, Order issued 10/14/09.
13. Dig Safe Notice No. 635, Order issued 1/22/10.
14. Dig Safe Notice No. 637, Order issued 1/22/10.
15. Dig Safe Notice No. 642, Order issued 1/22/10.
16. Dig Safe Notice No. 648, Order issued 1/22/10.
17. Dig Safe Notice No. 670, Order issued 6/23/10.
18. Dig Safe Notice No. 671, Order issued 6/23/10.
19. Dig Safe Notice No. 672, Order issued 6/23/10.
20. Dig Safe Notice No. 675, Order issued 6/23/10.
21. Dig Safe Notice No. 677, Order issued 6/23/10.
22. Dig Safe Notice No. 680, Order issued 6/23/10.
23. Dig Safe Notice No. 682, Order issued 6/23/10.
24. Dig Safe Notice No. 687, Order issued 6/23/10.

These repeated failures to mark the location of its underground facilities in accordance with the Dig Safe requirements indicate that Comcast has failed to take appropriate steps to ensure compliance with its legal obligations. It is also apparent that the fines that it faces under the Dig Safe statute have not provided sufficient incentive for Comcast to comply with the Dig Safe requirements.

Comcast's failures to properly mark its facilities are not mere technical violations of the law with no real-world consequences. Instead, those failures can have significant impacts on Comcast customers and on those who are engaged in the excavation activities. Affected customers are saddled with the inconvenience and frustration of service interruptions that should not have occurred, while those conducting the excavation activities may be forced to interrupt their work to determine what facilities they have struck and to notify the appropriate authorities.

Comcast's record of noncompliance with the requirements of the Vermont Dig Safe statute and the associated Board Rules raises significant questions and concerns about its compliance with the requirements of the CPGs that authorize it to own and operate cable television systems in Vermont. As noted above, those CPGs require that Comcast "at all times comply with Vermont law and all applicable regulations" Therefore, today, we open an investigation into Comcast's compliance with Condition 12 of the CPG issued in Docket No. 7077 and Condition 12 of the CPG issued in Docket No. 7379. The investigation will consider whether penalties should be imposed for any non-compliance with those conditions and whether,

as a result of any such non-compliance, good cause exists to modify the CPGs that the Board issued Comcast in Docket Nos. 7077 and 7379.

III. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Pursuant to 30 V.S.A. §§ 30, 209(a), 502, 509, 7006, and Board Rule 3.800, an investigation is commenced regarding compliance of Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC with the requirements of Vermont's Underground Utility Damage Prevention Program.

2. Pursuant to 30 V.S.A. Section 10, the Public Service Board will hold a prehearing conference in this matter on Wednesday, July 28, 2010, commencing at 1:30 P.M., at the Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont.

Dated at Montpelier, Vermont, this 13th day of July, 2010.

<u>s/ James Volz</u>)	
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<u>s/ David C. Coen</u>)	PUBLIC SERVICE
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<u>s/ John D. Burke</u>)	BOARD
)	
)	OF VERMONT

OFFICE OF THE CLERK

FILED: July 13, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)